88-422 (1)

Supreme Court, U.S.
FILED
SEP 6 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

# In The

# Supreme Court Of The United States

OCTOBER TERM, 1988

**WILLIAM C. RADO, SR.,**
*Petitioner,*

v.

**STATE OF CONNECTICUT,**
*Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

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Printed by

Brescia's Printing Services, Inc.
66 Connecticut Boulevard
East Hartford, CT 06108
528-4254

## QUESTIONS PRESENTED

1. Does the Connecticut one-man grand jury statute, former Section 54-47, which permits the Superior Court to appoint a judge to conduct an investigative hearing, with the assistance of the State's Attorney's office, into the possible commission of crimes by individuals violate the separation of powers doctrine and offend minimal due process requirements by virtue of its construction and the judicial bias inherent in its process?

2. Are the defendant's rights of confrontation and due process, as guaranteed by the Sixth and Fourteenth Amendments, violated when the trial court refuses to grant defendant's motion requesting access to grand jury transcripts?

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## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

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The Petitioner, William C. Rado, Sr., respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Appellate Court of the State of Connecticut entered in this proceeding on May 3, 1988 and to review the judgment of the Supreme Court of the State of Connecticut entered in this proceeding on July 8, 1988.

## CITATION

A decision of the Connecticut Supreme Court, *State v. William C. Rado, Sr.* (a copy of which is annexed hereto), denying defendant's Petition for Certiorari after a decision of the Connecticut Appellate Court, *State v. William C. Rado, Sr.*, 14 Conn. App. 322, ____ A.2d ____ (1988) (a copy of which is attached hereto).

## JURISDICTIONAL GROUNDS

On May 3, 1988 the Connecticut Appellate Court entered judgment affirming the conviction of William C. Rado, Sr. on three counts of the crime of Bribe Receiving. Thereafter on May 13, 1988, in accordance with Connecticut Practice Book Sections 4121 *et seq.*, 2013, 4183 and 4187, a Motion for Reargument was filed, which motion was denied on May 25, 1988. Thereafter on June 13, 1988, in accordance with Connecticut Practice Book Section 4126 *et seq.*, a Petition for Certification by the Connecticut Supreme Court was filed which Petition was denied on July 8, 1988.

The jurisdiction of this Court is invoked under the authority of 28 U.S.C.A. § 1257 (3).

## CONSTITUTIONAL AND STATUTORY PROVISIONS

The defendant relies upon the following provisions of the United States Constitution with respect to Questions Presented:

Article I Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Article II Section 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term . . .

Article III Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.[1] The Judges, both of the supreme and inferior Courts shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Article III Section 2. The judicial Power shall extend to all Cases, in law and Equity, arising under this Constitution, the Laws of the United States, and treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies between two or more States; — between a State and Citizens of another State; — between Citizens of different States, — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.[1]

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Fourteenth Amendment

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction therof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## CONNECTICUT GENERAL STATUTES

**Sec. 54-47. Investigations into commission of crime.** (a) Whenever it appears to the superior court for any judicial district that the administration of justice requires an investigation to determine whether or not there is probable cause to believe that a crime or crimes have been committed within the judicial district, said court may order an inquiry to be made into the matter, to be conducted before any judge, state referee, or any three judges of said court designated by it.

(b) The chief state's attorney and the deputy chief state's attorney may also apply to the chief court administrator for an order that an inquiry be made to determine whether or not

there is probable cause to believe that a crime or crimes have been committed. If the chief court administrator is satisfied from the application and any other papers or evidence submitted in support thereof that the administration of justice requires such an inquiry, he shall order that it be made and shall appoint a judge, a state referee or any three judges of the superior court to conduct the inquiry, with the assistance of the chief state's attorney, deputy chief state's attorney or any state's attorney or assistant state's attorney.

(c) Such inquiries shall be conducted in public or private as said court or chief court administrator orders.

(d) The attendance of witnesses and the production of documents at such inquiries may be compelled by subpoena, signed by any official authorized to issue such process.

(e) If any witness properly summoned fails to appear or to produce any documents included in the subpoena, or if he fails to answer any proper question, the judge, referee or judges conducting the inquiry may report the matter to the state's attorney for the judicial district wherein the investigation is being conducted and such state's attorney may file a complaint setting forth the facts at any criminal session of the superior court in such judicial district. The court shall thereupon issue a citation to the witness to appear before said court and show cause why he should not be punished as for a contempt, and if, after hearing, the court finds that he failed to appear without due cause or failed to produce any document properly to be presented to the judge, state referee or judges conducting the investigation or failed to answer any proper question in the course of the investigation, it may punish him as it might a witness failing to appear, to produce a document properly to be considered or to answer a proper question before the court.

(f) Witnesses may be examined by the judge, state referee or judges conducting the inquiry, by the state's attorney or assistant state's attorney or by any other attorney or

attorneys appointed by the court for such purpose. The official stenographer of such superior court or his assistant shall record any testimony so taken. At any such hearing a witness shall have a right to counsel and shall be informed of such right by the official conducting the inquiry.

(g) At the conclusion of such inquiry the judge, referee or judges conducting the inquiry shall file with the court a report and the court shall direct whether, and to what extent, the report shall be made available to the public or interested parties. Any transcript of testimony taken at the inquiry shall likewise be filed with the court and it shall have the same powers with reference to it as it has with reference to the report; provided any person accused of crime as a result of the inquiry shall have access at all reasonable times to the transcript of his own testimony given by him in such inquiry.

## STATEMENT OF THE CASE

The defendant, William C. Rado, the Mayor of Naugatuck, Connecticut, was tried and convicted on three counts of Bribe Receiving in the Superior Court in the Judicial District of Waterbury, before the Honorable Leonard W. Dorsey.

The defendant's arrest was based on evidence obtained during a One-Man Grand Jury investigation conducted pursuant to Connecticut General Statutes § 54-47, *supra.* Said Grand Jury was convened on November 18, 1983, after Chief State's Attorney Austin McGuigan made an application to the Chief Court Administrator, pursuant to Connecticut General Statutes § 54-47, for an order establishing a Judicial Inquiry to investigate campaign financing violations, improprieties in the awarding of state and municipal contracts, bribery, kickbacks and the abuse of official positions in the Borough of Naugatuck. That same day, Judge Maurice Sponzo, Chief Court Administrator, ordered the establishment of said Judicial Inquiry and appointed the Honorable George D. Stoughton as its Grand Juror.

Following the defendant's arrest, a series of motions were filed pertaining to discovery materials.

On May 13, 1985 the defendant filed a Motion to Produce Grand Jury Transcripts on the ground that access to the transcripts was essential to the defendant's effective implementation of his right to due process and effective assistance of counsel. This motion was denied by the Court on March 12, 1986. The denial was assigned as error and the issue was considered by the Connecticut Appellate Court, which ruled that the denial of access to the Grand Jury transcripts was not error.

On November 6, 1985, the defendant also filed his Motion to Dismiss the One-Man Grand Jury and all charges against the defendant on the grounds that the One-Man Grand Jury is unconstitutional, therefore rendering all grand jury

activities "void ab initio." That motion was denied on January 9, 1986 by the Honorable Judge Gill. The denial was assigned as error and the issue was considered by the Connecticut Appellate Court which ruled that the One-Man Grand Jury Statutes was not unconstitutional and did not violate the doctrine of separation of powers.

After a trial by jury, the defendant was found guilty of three counts of Bribe Receiving and was thereafter sentenced to concurrent two year sentences on the three counts plus a Three Thousand ($3,000.00) Dollar fine.

## ARGUMENT OF LAW

1. **Does the Connecticut one-man grand jury statute, former Section 54-47, which permits the Superior Court to appoint a judge to conduct an investigative hearing, with the assistance of the State's Attorney's office, into the possible commission of crimes by individuals violate the separation of powers doctrine and offend minimal due process requirements by virtue of its construction and the judicial bias inherent in its process?**

Fourteenth Amendment jurisprudence has long considered state practices and procedures that endanger the fundamental right to an impartial judge to violate due process. Classical legal theorists and the framers of the Constitution recognized that inadequate separation of the executive and judicial power posed a significant threat to judicial impartiality. Connecticut's One-Man Grand Jury system so clearly violates the due process right to an impartial judge that it is therefore unconstitutional.

The framers of the Fourteenth Amendment emphasized that due process created a right to a "fair" and impartial trial.[1]

The defendant has been deprived of his right to a fair trial by an impartial tribunal, a right guaranteed to him by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution. The Due Process clause requires that every person charged with a crime has an absolute right to an unbiased trial before an impartial judge and unprejudiced jury. *Parker v. Gladden*, 385 U.S. 363 (1966).

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[1] See *Cong. Globe*, 39th Cong., 1st Sess. 2899 (1866) (Senator Cowan stating due process demands fair trial); *Cong. Globe*, 42d Cong., 1st Sess. 152–153 (1871) (J. Garfield, participant in 39th Congress, observing Fourteenth Amendment demands impartial trial).

The Connecticut One-Man Grand Jury system is unique in that its process of investigating crimes is unduplicated in any other state in this nation.

Those unfamiliar with Connecticut's system should be startled to discover its unorthodox machinations.

A Connecticut One-Man Grand Jury investigation begins when a Connecticut Superior Court Judge (appointed under Article V of the Connecticut Constitution) is appointed to sit as an Investigative Grand Jury (See CGS § 54-47a, former CGS § 54-47) by the Chief Court Administrator (himself a judge appointed under Article V of the Connecticut Constitution). The Judge-Grand Juror does not relinquish his ordinary judicial duties and, in fact, may preside over other criminal cases during his tenure as grand juror.

While sitting as a grand juror he performs all the functions of an investigator, summoning witnesses and examining and issuing subpoenas for documents for his review. At the conclusion of this inquiry the judge issues a report and makes recommendations. As a result of his inquiry individuals may be accused of and arrested for crimes.

Such an investigative system, whereby a Superior Court Judge is appointed by another judge to take on the dual role of judge/investigator, violates even the minimal requirements of due process of the Fourteenth Amendment for the following reasons:

(a) "A judge who is charged with assisting and improving enforcement efforts against organized crime must adopt a pro-government perspective which is ill-suited to his obligation to be *neutral* in the Courtroom. The kind of information he might uncover through the investigatory activities would further endanger his impartiality." *Scaduto, President's Commission on Organized Crime (Subpoena of Scaduto),* 763 F.2d at 1191, 1197 (11th Cir., 1985). (Emphasis added.)

(b) "This aggregation of powers and inherently concomitant denial of historic freedoms were unknown to the common law at the time our institutions crystallized in the Constitution. They are altogether at variance with our tradition and system of government. They cannot stand the test of constitutionality for purposes of depriving any person of life, liberty or property. There is no semblance of due process of law in the scheme when it is used for those ends." *In Re Oliver,* 333 U.S. 257 (1955).

The ratification in 1868 of the Fourteenth Amendment provided that no state could thereafter "deprive any person of life, liberty or property, without due process of law." This provision of the Fourteenth Amendment imposes upon the United States Supreme Court particular responsibility over the caliber of the criminal justice dispensed in the States.

Due process connotes those basic rights that courts have expressed as "those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions, 'principles' so rooted in the traditions and conscience of our people as to be ranked as fundamental."

As Justice Frankfurter once described the judge's task in delineating due process rules:

> "Regard for the requirements of the Due Process Clause inescapably imposes upon this Court an exercise of judgment upon the whole course of proceedings in order to ascertain whether they offend those canons of decency and fairness which express the notion of justice of english-speaking peoples even to those charged with the most heinous offenses." *Rochin v. California,* 342 U.S. 165, 169 (1952).

Examining the whole course of the criminal proceeding in Connecticut requires the reviewing Court to scrutinize the accusatory process set up by the One-Man Grand Jury system.

Due process requires a defendant's trial be before a neutral judge — a judge may not preside over a hearing to try charges that arose out of a grand jury proceeding in which he was the sole grand juror. In a case where a judge is an investigator, such as in this case, another judge — a member of the same state judiciary — cannot preside over a hearing to try charges that arose out of that investigative grand jury proceeding conducted by his brother-judge.

This Honorable Court, in an analogous situation, held that a judge cannot have a direct, personal, substantial pecuniary interest in reaching a conclusion against the defendant, as was once the rule in Ohio where the mayor, sitting as a judge, received a percentage of the fine in cases involving violations of liquor laws. *Tumey v. Ohio*, 373 U.S. 510 (1927).

The same is true here, that a judge cannot have a direct personal and substantial investigatory interest in reaching a conclusion against a defendant when his role as a judge requires him to be a neutral and impartial arbiter.

In *Tumey v. Ohio*, *supra*, the Court first stated that "(e)very procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law." *Id.* at 532. The *Tumey* Court then forcefully observed that "(a) situation in which an official occupies two practically and seriously inconsistent positions, one partisan and the other judicial, necessarily involves a lack of due process of law in the trial of defendants charged with crimes before him." *Id.*

In the instant case the process from one-man grand juror, to filing of information, to trial, involves at least three judges. The Administrative Judge appoints one of his brethren to act as the sole judge-grand juror. The judge-grand juror, upon completion of his investigation then submits his findings to yet another member of the judicial fraternity who then may make a probable cause finding and issue an arrest warrant.

Once the warrant has been issued the defendant's case is subject to the scrutiny of yet another member of the judicial brotherhood. This third judge undertakes the task of presiding over the defendant's subsequent trial. However, he begins the trial process with full knowledge that one of his brethren has already made findings inculpatory to the defendant, based upon a judicial investigation that is in essence prosecutorial. In Orwellian doublespeak, the investigation was conducted by a *Judgecutor.* One cannot gainsay the significance of such knowledge or its impact upon such trial judge's ability to be fair and impartial. Thus, the bias inherent in Connecticut's One-Man Judge-Grand Jury or Investigator/Judge is manifest, as is its violation of minimal due process standards guaranteed by the Fourteenth Amendment to the United States Constitution.

This close interaction between members of the judiciary compromises the defendant's right to a trial by an impartial tribunal. Under this scenario judges will be unduly influenced by the findings of their peers. Consequently, they will no longer remain impartial arbitrators in the courtroom. It is this impartiality which is the foundation of the judicial system — any personal bias or prejudice, or the appearance of bias or prejudice by the judge, renders the adjudicative process unconstitutional, depriving the defendant of a fair trial.

Like most due process safeguards, the right to an impartial judge assumes special importance in criminal cases. The liberty interest has always received vigorous due process protection.[2]

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[2] See *Lassiter v. Department of Social Services,* 452 U.S. 18, 25-27 (1981) (defendant's right to counsel tied to risk trial poses to his or her personal freedom); *Scott v. Illinois,* 440 U.S. 367, 373 (1979) (trials leading to loss of liberty different in kind and meriting greater due process safeguards than trials resulting in fines or threat of imprisonment); *Arnett v. Kennedy,* 416 U.S. 134, 157 (1974) (right to continued employment merits lesser protection than "elemental freedom from external restraint"); *Morrisey v. Brewer,* 408 U.S. 471 (1972) (creating higher due process standard for prison parole hearing than for administrative hearing where liberty interest not at stake).

The one-man grand jury lacks the due process safeguards present in an adversarial setting. The first two critical stages, the investigatory and accusatory, are controlled solely by judges, the so-called neutral magistrate relying upon the investigation of his fellow judge. It is impossible to measure or minimize the effect the "moral suasion" which the judge-investigator's report has on his fellow judges' decision-making process. The defendant's right to a fair trial is demolished by the very office designed to safeguard his precious rights.

In support of this argument the defendant directs this Court's attention to Justice Rutledge's concurring opinion in *In Re Oliver, supra.*

The United States Supreme Court granted certiorari in *Oliver* and considered the constitutionality of the actions of a judge-grand juror in the State of Michigan, in connection with a contempt proceeding.

The issue of the constitutionality of the judge-grand jury statute itself was not directly before the Court; however, Justice Rutledge addressed that issue in his concurring opinion.

Justice Rutledge proposes that the *Oliver* court should have gone further and held the judge-grand jury statute unconstitutional, despite the fact that Michigan's State Constitution provides a justification for its existence.

The essence of Justice Rutledge's opinion is that the Michigan judge-grand jury statute is unconstitutional because it dilutes fundamental constitutional rights guaranteed by the Bill of Rights. The defendant in the instant matter is arguing that Connecticut's one-man grand jury violates his due process rights in that it dilutes and eradicates his fundamental right to an impartial tribunal.

The purpose of an investigation under General Statutes former Section 54-47 was to "determine whether or not there

[was] probable cause to believe that a crime or crimes [had] been committed." Under normal circumstances this should be considered a "classical judicial function." The defendant maintains, however, that General Statutes former Section 54-47(b) is a legislative aberration which required anything but the otherwise accepted role of a Judge, that being the neutral and detached determiner of whether or not probable cause exists. Instead, the cornerstone of any determination under the Statutes was based upon the active investigative and fact-finding participation of a Judge along with members of the State's Attorney's office.

Perhaps the most often quoted language used when describing the fundamental reasons for requiring a Judge to determine whether probable cause exists may be found in *Johnson v. United States,* 333 U.S. 10 (1948). There, Mr. Justice Jackson stated "[Fourth Amendment] protection consists in requiring . . . inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime." 333 U.S. at 14. The major flaw with General Statutes former Section 54-47 is that is requires a Judge to engage in two functions, acquisitorial and adjudicative. The continuous collaboration of a Judge with law enforcement personnel involved in the investigative and accusatorial process severely weakens his ability to make a detached, neutral and fair determination of whether probable cause exists at the end of that investigation. As The Honorable Robert Berdon stated in his article, *Connecticut Grand Juries: The Case for Reform,* 54 Conn. Bar J. 8, 17 (1980), "[i]t is repugnant to me that Judges get involved in the accusatorial process. I believe this is not the function of the Judiciary; its function is to judge and not accuse." Although General Statutes former Section 54-47 labels such an investigation an "inquiry" and "report," it does nothing to lessen the appearance of impropriety arising from the commingling of functions of both these branches of government. Nor does it mitigate the investigator-judge's essentially prosecutorial role. In other words, while a member of the judiciary, he is executing a fundamental executive function.

General Statutes former Section 54-47 clearly delegates the role of the accuser to the Judge. The possibilities for abuse and infringement on an individual's fundamental rights are made manifest by the breakdown of the separation of powers found in General Statutes former Section 54-47.

In the instant case, the imposition of a grand jury's investigatory powers on a Superior Court Judge does interfere with his ability to perform his constitutionally required duties. His judicial office requires him to approach the subject of every investigation with *impartiality*, as acknowledged and emphasized by the Court of Appeals for the 11th Circuit in *Scaduto*, *supra*. Impartiality is a constitutionally ordained requirement of a judge's office and the essence of his role in a free society. In effect, under Connecticut General Statutes Section 54-47, a hybrid agency is created, part executive-part judiciary, from whole cloth, for the sole purpose of investigating, as in this case, a single individual.

It is precisely this feature of the dual role of a member of the judiciary, that is to say investigator/judge, which was condemned by the Court in *Scaduto*. When his judicial impartiality is significantly affected by the activities he performs as grand juror and when there exists the prospect of his sitting as a judge on similar cases subsequent to his grand jury appointment, it becomes manifest that the law which creates this constitutional schizophrenia must be declared a nullity.

Our system of law has always endeavored to prevent not only actual bias in the trial of cases, but even the probability of unfairness.

The United States Supreme Court to this end stated,

> ". . . no man . . . is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered." *In re Murchison*, 349 U.S. 133, 136 (1955).

The *Murchison* court concluded,

> "Such a stringent rule may sometimes bar trial judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way 'justice must satisfy the appearance of justice.' " *Murchison* at 136 citing *Offutt v. United States,* 348 U.S. 11, 14.

Certainly, the appearance of justice cannot be achieved when, as in the instant case, a Superior Court Judge spearheads an investigation with the assistance of the State's Attorney's office and ultimately determines whether or not there is sufficient evidence to charge an individual with a crime. That Superior Court Judge then makes a recommendation which is converted by his assistants — namely, the State's Attorney's office, into a charging document which is then passed along to another Superior Court Judge who issues the arrest warrant.

Once the investigation is complete, the investigatory judge then changes hats, returning to his seat as a member of the "independent" judiciary. His movement between investigator, working hand-in-hand with the prosecutor, and impartial Superior Court Judge unquestionably creates the appearance of bias in favor of the State, when sitting on a case similar in circumstances to those whose investigation he led.

Indeed, allowing judges to assume such a duplicitous role is so fundamentally incongruous with our constitutional scheme that it blurs that separation of prosecutor and judge cherished by the framers of our Constitution and so crucial to the protection of individual liberty. As Alexander Hamilton wrote with respect to the notion that only a unitary executive should investigate and enforce the criminal law,

> "If is *far more safe there should be a single object for the jealousy and watchfulness of the people; and in a word that all multiplication of the executive is rather dangerous than friendly to liberty.*" *The Federalist,* No. 70, at 479. (Emphasis added.)

The constitutional doctrines implicated by this case do not concern merely questions of governmental organization and structure, but rather involve checks and balances that were deigned as an "essential precaution in favor of liberty." James Madison, *The Federalist*, No. 47 at 323. The grand jury statute at issue jettisons traditional adherence to constitutional doctrines of separation of powers and, in so doing, seriously weakens constitutional structures that serve to protect individual liberty.

The commingling of investigatory and judicial functions within the one-man grand jury system raises questions of impartiality and impropriety because the grand juror is not "detached" from the investigatory process but, rather, presides over it.

**2. Are the defendant's rights of confrontation and due process, as guaranteed by the Sixth and Fourteenth Amendments, violated when the trial court refuses to grant defendant's motion requesting access to grand jury transcripts?**

The United States Supreme Court recognizes that access to grand jury transcripts and other discovery is essential to the defendant's effective implementation of his right to due process and effective assistance of counsel.

In *Dennis v. United States*, 384 U.S. 855 (1965), the Court reversed the Circuit Court's affirmance of the Trial Court's denial of grand jury transcripts to defendants. In *Dennis*, the Court stated:

> "A conspiracy case carries with it the inevitable risk of wrongful attribution of responsibility to one or more of the multiple defendants. *See, e.g., United States v. Bufalino*, 285 F.2d 408, 417–418 (CA 2d Cir. 1960). Under these circumstances, it is especially important that the defense, the judge and the jury

> should have been unlocked. In our adversary system for determining guilt or innocence it is rarely justifiable for the prosecution to have exclusive access to a storehouse of relevant fact. Exceptions to this are justifiable only by the clearest and most compelling consideration.

*Id.* at 873.

The Court observed that "disclosure, rather than suppression, of relevant materials ordinarily promotes the proper administration of criminal justice." *Id.* at 870.

"The effective denial of due process and effective assistance of counsel to defendants in a complex criminal case" will result if the defendant is given insufficient discovery and time to prepare the defense. *United States v. Algie*, 503 F. Supp. 783 at 797.

The right to effective cross-examination is a constitutional right protected by the Sixth Amendment's guarantee that every criminal defendant have an opportunity to confront the witnesses against him. *Douglas v. Alabama*, 360 U.S. 415 (1965). This constitutional right embraces a coordinate right to have access to relevant facts upon which to predicate such an examination. *Smith v. Illinois*, 390 U.S. 129 (1968) and to have an opportunity to explore fully the witnesses' motives and intent. *Davis v. Alaska*, 415 U.S. 308 (1974).

In *United States v. Achtenberg*, 459 F.2d 91 (8th Cir.), *cert. denied*, 409 U.S. 932 (1972), the court reversed the conviction of the trial court because it had refused defendant access to grand jury transcripts. The court noted the time and expense for interviewing the potential witnesses was prohibitive for the defendant but not the government, which had the superior resources of the FBI. *Id.* at 96.

Similarly, in *United States v. Narcisco*, 446 F. Supp. 252, 265 n.9 (E.D. Mich. 1977), the court stated that in a case

involving numerous potential witnesses, the government voluntarily provided defendants with grand jury transcripts. In that case the court noted the overriding policy announced by the Supreme Court in *United States v. Nixon*, 418 U.S. 683, 708–09.

> "We have elected to employ an adversary system of criminal justice in which the parties contest all issues before a court of law. The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence."

446 F. Supp. at 270–271.

The defendant also has the right, under *Franks v. Delaware*, 438 U.S. 154 (1978) to examine and expose material misstatements or omissions in arrest warrant affidavits. A defendant cannot exercise this right without access to the information on which the prosecution based its affidavit.

Finally, a defendant is entitled under *Brady v. Maryland*, 373 U.S. 83 (1963), to all exculpatory material.

Former Connecticut General Statutes Section 54-47(a) permitted disclosure of grand jury transcripts "at any time to any person, and to whatever extent deemed appropriate."

Connecticut P.A. 85-611 Section 6 provides that disclosure of the grand jury record can be made to the public when it is deemed to be in the public interest.

Connecticut General Statute Section 53-45(a) authorizes the release to a defendant of accusatorial grand jury transcripts.

It is illogical that the general public can gain access to grand jury transcripts when it is in the public interest, and a defendant cannot gain access to the transcript when a critical right to liberty is at stake.

Nevertheless, Connecticut's investigative grand jury system continued to be a creature of controversy and received much debate and public scrutiny in recent months. In response, the General Assembly passed Senate Bill No. 534. Said Bill provides for a "presumption of openness" with respect to grand jury reports. It allows any person to apply for access to such reports.

With respect to grand jury secrecy, Attorney Hugh F. Keefe begins his article *Tyranny Works Best in Secrecy,* 54 Conn. Bar J. at 19 (1980), with a quote from Judge Jerome Frank in *United States v. Gingenti,* 197 F.2d 218 (2d Cir. 1952). Therein Judge Frank states:

> "Before we sacrifice all our other values to effective law enforcement, we should reflect on the brutal consequences of the totalitarians' alleged efficiency in pursuing suspected criminals. Such reflections should teach us this: An over-zealous prosecutor's heaven may be everyone else's hell." *Id.*

The *Standards for Criminal Justice,* Section 11-2.1(a)(iii)(1980), the *A.L.I. Model Code of Pre-Arraignment Procedure,* Section 340.3(2) (1975) and the *National Conference Commission on Uniform State Laws, Uniform Rules of Criminal Procedure.* Section 421(a) (1974), all afford a defendant pretrial discovery of grand jury transcripts.

In denying the defendant access to the transcripts of the Judicial Inquiry, which was responsible for the investigation of the charges brought against him, the Court committed reversible error in that it denied him his fundamental constitutional right to confront the witnesses against him and, in so doing, violated his Fourteenth Amendment right to due process of law.

## CONCLUSION

Many years ago Justice Cardozo condemned the one-man grand jury system as an inquisition where the judge ceases to perform a judicial role and becomes both judge and prosecutor. *In Re Richardson,* 247 N.Y. 401, 160 N.E. 655 (1928). It is wholly appropriate that this Court do the same.

This Court is not bound by a state court's construction of its statutes, where due process of law is involved. *Grannis v. Ordean,* 234 US 385, 394, 58 L. ed 1363, 1368, 34 S Ct 779; *Murray v. Gibson,* 14 How (US) 421, 14 L ed 755; *Norton v. Shelby County,* 118 US 425, 30 L ed 178, 6 S Ct 1121; *Stutsman County v. Wallace,* 142 US 293, 35 L ed 1018, 12 S Ct 227; *Scott v. McNeal,* 154 US 34, 38 L ed 896, 14 S Ct 1108; *Ashcraft v. Tennessee,* 322 US 143, 88 L ed 1192, 64 S Ct 921.

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Appellate and Supreme Courts of the State of Connecticut.

PETITIONER, WILLIAM C. RADO, SR.

By TIMOTHY C. MOYNAHAN
His Attorney
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No. _____

# In The
# Supreme Court Of The United States

OCTOBER TERM, 1988

**WILLIAM C. RADO, SR.,**
*Petitioner,*

v.

**STATE OF CONNECTICUT,**
*Respondent.*

## APPENDIX

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## STATE OF CONNECTICUT *v.* WILLIAM RADO, SR. (5387)

DALY, BIELUCH and FOTI, Js.

Convicted of three counts of the crime of bribe receiving, the defendant, a former mayor of Naugatuck who was allegedly paid for, inter alia, disclosing to a certain construction company the amounts of the lowest bids on certain construction contracts and allowing that company to submit late bids, appealed to this court. The defendant had been arrested following an investigation by a grand jury into certain irregularities in the conduct of public officials in Naugatuck. *Held:*

1. Because the existence of an investigation by the grand jury is not generally violative of individual rights, and because the defendant did not establish that the investigation here violated any right personal to him, he lacked standing to challenge the statute (§ 54-47) authorizing such investigations; more, even if he had standing, the defendant failed to meet his burden of proving beyond a reasonable doubt that, because it authorizes a judge to perform the functions of a grand juror, § 54-47 was unconstitutional.
2. There was no merit to the defendant's claim that his manipulation of the process by which municipal contracts were awarded was not a "decision, opinion, recommendation or vote" as defined by the statute (§ 53a-148) which proscribes bribe receiving by a public servant.
3. The defendant's claim that he should have been prosecuted under the misdemeanor statute ( § 53a-161b) applicable to disclosure of bid information was unavailing; that statute was intended to penalize collusion among contractors seeking state or municipal contracts.
4. The trial court did not err in determining that the defendant did not meet his burden of proving particularized need for the disclosure of the transcript of testimony of witnesses who appeared before the grand jury.

Argued on December 9, 1987—decision released May 3, 1988

Amended information charging the defendant with three counts of the crime of bribe receiving, brought to the Superior Court in the judicial district of Water-

bury and tried to the jury before *L. Dorsey, J.*; verdict and judgment of guilty, from which the defendant appealed to this court. *No error.*

*Timothy C. Moynahan*, with whom, on the brief, was *Theresa M. Dalton*, for the appellant (defendant).

*Christopher Malany*, deputy assistant state's attorney, with whom, on the brief, was *Domenick Galluzzo*, assistant state's attorney, for the appellee (state).

DALY, J. The defendant appeals from the judgment of conviction, after a jury trial, of three counts of bribe receiving in violation of General Statutes § 53a-148 (a).[1] The defendant challenges the constitutionality of the investigating grand juror and argues that the trial court erred in denying his motion to dismiss filed on the basis of insufficient evidence and in denying him access to the grand juror transcripts.

The jury could reasonably have found the following facts. The defendant, a former mayor of Naugatuck, on three occasions manipulated the process by which municipal construction contracts were awarded. Twice the defendant altered the process under which public contracts were awarded by providing Ronald Albaitis, one of the three partners in the family owned Albaitis Brothers Construction Company, with the necessary information for obtaining the contract; the defendant supplied Albaitis with the dollar figure of the lowest bid and allowed Albaitis to resubmit an altered bid after the bidding was supposedly closed.[2] On a third occa-

[1] General Statutes § 53a-148. "BRIBE RECEIVING: CLASS D FELONY. (a) A public servant or a person selected to be a public servant is guilty of bribe receiving if he solicits, accepts or agrees to accept from another any benefit for, because of, or as consideration for his decision, opinion, recommendation or vote."

[2] The defendant informed Albaitis that the lowest bid on the construction contract for the drainage of the high school field was $16,295. After the silent bidding was closed, the defendant handed Albaitis the necessary

sion, the defendant awarded Albaitis' company a $5000 brook blasting contract without requiring bidding despite the borough charter provision that advertising for bids was required for all contracts over $1000.[3] On each of the three occasions, the defendant demanded and received a $1000 bribe for altering the process in favor of Albaitis Construction.

On November 18, 1983, the chief state's attorney made an application to the chief court administrator pursuant to General Statutes (Rev. to 1985) § 54-47[4] requesting that an inquiry be made concerning certain irregularities in the conduct of public officials in the borough of Naugatuck. The grand juror, *Stoughton, J.*, heard testimony from Albaitis and William Gogin, the town comptroller. Upon the completion of the investigation, the grand juror compiled a report. On April 10, 1985, the defendant was arrested as a result of this report. Eventually, the defendant was tried and found guilty, by a jury, of three counts of bribe receiving.

The defendant's first claim of error is that it is unconstitutional for a judge to act as grand juror. Specifically, the defendant argues that having a judge perform

bid bond and subsequently accepted the altered bid. Albaitis changed his original bid of $64,000 to $16,195 and, as a result, was awarded the contract. The second contract called for building graduation steps at the high school. Once again, after informing Albaitis of the lowest bid and after the bidding was closed, the defendant accepted Albaitis' altered bid from $50,000 to $32,455.

[3] On the brook blasting contract, the defendant called Albaitis and the two inspected the brook. After inspection, Albaitis estimated the price of the work at $6500. The defendant, later, phoned Albaitis and informed him that the contract was his for $4000 with $1000 payable for receiving the contract.

[4] Prior to its repeal by Public Acts 1985, No. 85-611, General Statutes § 54-47 (b) provided in relevant part: "The chief state's attorney . . . may also apply to the chief court administrator for an order that an inquiry be made to determine whether or not there is probable cause to believe that a crime or crimes have been committed."

the functions of a grand juror violates the separation of powers doctrine. We find that the claim is without merit.

As a preliminary matter, we must first decide whether the defendant has standing to raise this claim. " 'Standing is not a technical rule intended to keep aggrieved parties out of court; nor is it a test of substantive rights. Rather it is a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented. See, e.g., *Baker* v. *Carr*, 369 U.S. 186, 204, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962); *Stern* v. *Stern*, 165 Conn. 190, 192, 332 A.2d 78 (1973). These two objectives are ordinarily held to have been met when a complainant makes a colorable claim of direct injury he has suffered or is likely to suffer, in an individual or representative capacity.' *Maloney* v. *Pac*, 183 Conn. 313, 320–21, 439 A.2d 349 (1981). The question of standing does not involve an inquiry into the merits of the case. It merely requires the plaintiff to make allegations of a colorable claim of injury to an interest which is arguably protected or regulated by the statute or constitutional guarantee in question. *Data Processing Service* v. *Camp*, 397 U.S. 150, 153, 90 S. Ct. 827, 25 L. Ed. 2d 184 (1969); *Ducharme* v. *Putnam*, 161 Conn. 135, 139, 285 A.2d 318 (1971)." *Reitzer* v. *Board of Trustees of State Colleges*, 2 Conn. App. 196, 199–200, 477 A.2d 129 (1984).

In the present case, the defendant cannot claim that he has any cognizable legal interest in the validity of the inquiry, even when it might lead to his arrest. Unlike a search warrant, which authorizes governmental invasion of a person's privacy interest, the one-man grand juror conducts a general investigation into the commission of a crime. The existence of a general

investigation violates no one's rights. Absent proof of a violation of a right personal to the defendant, such as his privilege against self-incrimination, the defendant lacks standing.

Even if we assume that the defendant's claims are reviewable, he has failed to prove that the statute was unconstitutional. In reviewing the claim, we must follow the rule set forth in *State* v. *Olds*, 171 Conn. 395, 370 A.2d 969 (1976). " 'We approach the question with great caution, examine it with infinite care, make every presumption and intendment in favor of validity, and sustain the act unless its invalidity is, in our judgment, beyond a reasonable doubt.' " *State* v. *Olds*, supra, 411, quoting *Edwards* v. *Hartford*, 145 Conn. 141, 145, 139 A.2d 599 (1958). The party challenging the constitutionality of a statute bears a "heavy burden" of proving unconstitutionality beyond a reasonable doubt. *State* v. *Hernandez*, 204 Conn. 377, 385, 528 A.2d 794 (1987). The defendant has failed to meet this burden.

We begin this analysis by stating that investigating inquiries by a judge have been held, in part, constitutional. *State* v. *Moynahan*, 164 Conn. 560, 565–67, 325 A.2d 199, cert. denied, 414 U.S. 976, 94 S. Ct. 291, 38 L. Ed. 2d 219 (1973); *McCarthy* v. *Clancy*, 110 Conn. 482, 495–97, 148 A. 551 (1930). The defendant's argument simply stated is that the former General Statutes (Rev. to 1985) § 54-47 offends the separation of powers doctrine. He asserts that the relationship between the judge and prosecutor "is an intercourse which is foul, unhealthy, abnormal and unnatural," because it confers to the judge the powers of the prosecutor. The defendant's argument clearly ignores the weight of authority.

"It is rudimentary that the three branches of government do not exist in discrete, airtight compartments, and that the rule of separation of governmental powers

cannot always be rigidly applied." *State* v. *Darden*, 171 Conn. 677, 679, 372 A.2d 99 (1976). Moreover, it is clear that " '[the] great functions of government are not divided in any such way that all the acts of the nature of the functions of one department can never be exercised by another . . . .' " *State* v. *Clemente*, 166 Conn. 501, 510, 353 A.2d 723 (1974), quoting *In re Application of Clark*, 65 Conn. 17, 38, 31 A. 522 (1894). The test or standard used is whether the function exercised by the judge is " ' "reasonably incidental to the performance of judicial duties." ' " *Adams* v. *Rubinow*, 157 Conn. 150, 160, 251 A.2d 49 (1968). The sole purpose of the one-man grand jury was to determine if there was probable cause to believe that crimes had been committed. Such a determination of probable cause has traditionally been a judicial function. See *State* v. *Heinz*, 193 Conn. 612, 616–17, 480 A.2d 452 (1984). Moreover, grand jury proceedings have, by our Supreme Court, been considered "an appendage of the court." *State* v. *Curcio*, 191 Conn. 27, 32, 463 A.2d 566 (1983). Finally, in *McCarthy* v. *Clancy*, supra, 499, our Supreme Court acknowledged the fact that the investigatory inquiry has been recognized as an appropriate judicial function by holding: "No question has heretofore been raised, so far as we are aware, as to the right of the General Assembly to cast upon justice the power to investigate crimes; nor do we think it is open to question. In an administrative capacity, they may pursue the investigation authorized by the statute in question . . . . "

The defendant has, additionally, asserted that the judicial inquiry creates a pervasive judicial bias which infects the cases which have begun with the one-man grand jury. The claim is that the trial court is improperly influenced by the investigatory reporting because they all belong to the same "judicial club." Once again, the defendant's claim is off base.

"Under Canon 3 (c) (1) of the code of Judicial Conduct '[a] judge should disqualify himself [or herself] in a proceeding in which his [or her] impartiality might *reasonably* be questioned. . . .' " *Papa* v. *New Haven Federation of Teachers*, 186 Conn. 725, 744–45, 444 A.2d 196 (1982). Our Supreme Court has held that recusal is mandated where a reasonable person, with knowledge of the facts would be led to conclude that a judge's " 'impartiality might reasonably be questioned.' " Id., 746. In this case, such a conclusion is not warranted. The finding of probable cause by another judge is not deemed conduct which would lead a reasonable person to the conclusion that the judge's impartiality might be questioned.

In his second claim of error, the defendant argues that the trial court erred in denying the defendant's motion to dismiss. The defendant puts forth two arguments in support of this claim. The first argument is that the court should have granted a judgment of acquittal because his conduct was not a "decision, opinion, recommendation or vote" within the meaning of the bribe receiving statute.[5] The second argument is a claim that the prosecution was improper. He claims that prosecution for a bribe resulting from the disclosure of information is preempted by the disclosure of bid or proposal statute, General Statutes § 53a-161b.[6] Both arguments are without merit.

[5] See footnote 1, supra.

[6] General Statutes § 53a-161b. "DISCLOSURE OF BID OR PROPOSAL: CLASS A MISDEMEANOR. Unless otherwise required by law, the prices quoted in a bid or proposal for any contract to be awarded by any commission, agency or department of the state or any political subdivision of the state shall not be disclosed by the *bidder or offeror* prior to the opening, in the case of a bid, or prior to the award, in the case of a proposal, directly or indirectly to any other *bidder or offeror or to any competitor*. Any person who violates the provisions of this section shall be guilty of a class A misdemeanor." (Emphasis added).

It is axiomatic that courts are required to read a statute in light of its purpose. In *State* v. *Carr*, 172 Conn. 458, 468, 374 A.2d 1107 (1977), our Supreme Court construed the bribery statute, General Statutes (Rev. 50 1985) § 53a-147, in stating that "the statute [should] be construed broadly in order to . . . prevent corruption in the public service . . . ." Furthermore, courts must interpret nontechnical words by their "commonly approved usage." General Statutes § 1-1 (a); see also *State* v. *Chiarizio*, 8 Conn. App. 673, 680, 514 A.2d 370, cert. denied, 201 Conn. 809, 515 A.2d 379 (1986). The word "decision" is commonly used as meaning "act of forming an opinion or of deciding upon a course of action." Webster, Third New International Dictionary. In this case, the state presented sufficient evidence that the defendant's conduct indicated that he had made up his mind on a course of action when he embarked upon a disclosure of competing bids and in the one instance of awarding the contract without competitive bidding.

Moreover, the legislative history of the statute is helpful in construing the statute. *State* v. *West*, 192 Conn. 488, 494, 472 A.2d 775 (1984); *State* v. *Giorgio*, 2 Conn. App. 204, 209, 477 A.2d 134 (1984). The original bribe receiving statute defined the scope of conduct as embracing a "decision . . . or other act of discretion." In that context a decision was equivalent to any exercise of discretion by the public servant.[7] Although the "other act of discretion" language was later omitted in the passage of the present statute, State Senator Salvatore C. DePiano, the author of the new bill characterized the change as merely "technical." 23 S. Proc.,

[7] Model Penal Code § 240.1 (Proposed Official Draft 1962) also defined bribery as requiring a "decision, opinion, recommendation, vote or other exercise of discretion . . . . " The comment on that particular section notes: "The official action focuses on decision-making, i.e., upon the exercise of discretion by the designated person. It is designed to include *minor ministerial acts* as well as major decisions of policy." (Emphasis added.) Id.

Pt. 12, 1980 Sess., p. 3820. The author further commented that the intent underlying the change was to "broaden the criteria under which a person could be found guilty of . . . bribe receiving . . . . " Id. With the legislative history, it is abundantly clear that the defendant's actions were included in the statute.

In the defendant's second argument, he claimed that he should not have been charged with violating General Statutes § 53a-148 (a), a class D felony, but should, instead, have been charged with General Statutes § 53a-161b, a class A misdemeanor. It is firmly established in Connecticut case law, however, that a prosecutor may charge any offense reasonably supported by the facts. *State* v. *O'Neill,* 200 Conn. 268, 279–80, 511 A.2d 321 (1986); *State* v. *Riggs,* 7 Conn. App. 180, 185, 508 A.2d 67, cert. denied, 200 Conn. 804, 510 A.2d 191 (1986).

In this case, we need only examine the plain language of the statute to disregard the defendant's claim. See *State* v. *Ellis,* 197 Conn. 436, 442, 497 A.2d 974 (1985). The statute, on its face, applies only to bidders and offerors. The plain language combined with the legislative history[8] clearly indicates that § 53a-161b was intended to penalize collusion among contractors seeking state or municipal contracts and not the corrupt public official.

In the final issue, the defendant argues that the trial court erred in denying his motion for disclosure of transcripts of witnesses who appeared before the one-man grand jury. Before trial, the defendant sought to obtain

[8] In summarizing the proposed legislation that would become § 53a-161b, Representative Richard D. Tulisano explained that the purpose was to "disallow *inside dealing between competitors* to fix prices and restrict price competition in bidding against, in dealing with both the State and political subdivisions of the State. (Emphasis added.) 23 H.R. Proc., Pt. 20, 1980 Sess. 5938.

the testimony of Albaitis and Gogin which was, after their direct testimony, given to the defendant. Although the defendant offered no compelling reasons for the disclosure, he now argues that he was deprived of his constitutional rights to confrontation and due process of law. We find no merit in these claims.

The defendant in a criminal prosecution has a constitutional right to confront the witnesses against him. *Douglas* v. *Alabama*, 380 U.S. 415, 85 S. Ct. 1074, 13 L. Ed. 2d 934 (1965); see also *State* v. *Shindell*, 195 Conn. 128, 140, 486 A.2d 637 (1985). The Supreme Court, however, has held that a denial of access to grand jury transcripts is not a violation of the confrontation clause. *Pennsylvania* v. *Ritchie*, 309 U.S. 316, 107 S. Ct. 989, 94 L. Ed. 2d 40 (1987). This court's recent analysis is consistent with *Ritchie* in stating that "the right to confrontation is the right to cross-examine and not the right to an all-inclusive cross examination." *State* v. *D'Ambrosia*, 14 Conn. App. 309, 316, A.2d (1988).

The defendant's claim that nondisclosure of the transcript offended his due process rights is, likewise incorrect. This court has recently stated in *State* v. *Waterman*, 7 Conn. App. 326, 345, 509 A.2d 518, cert. denied, 200 Conn. 807, 512 A.2d 231 (1986): "A defendant has no absolute right to inspect investigative grand jury testimony for the purpose of assisting him in preparation of a defense." (Citation omitted.) Connecticut case law is rich with citations that the safeguarding of the secrecy of the grand jury is an important task that the trial courts assume.[9] See, *In re Final Grand Jury Report Concerning the Torrington Police Department*, 197 Conn. 698, 709–712, 501 A.2d 377 (1985); *In re Investigation of the Grand Juror*, 4 Conn. App. 544, 553, 495 A.2d 1098 (1985). Because of the important interests in preserving secrecy, a party requesting dis-

closure must make a showing of a "particularized need." *In re Final Grand Jury Report Concerning the Torrington Police Department*, supra, 712. Further, the trial court's decision on disclosure is entitled to every reasonable presumption of correctness. Id., 714. In this case, the defendant made no such showing. The defendant merely asserted, in conclusory terms, that a general rule of disclosure of the transcript would be more advantageous. The trial court did not err in ruling that the defendant did not meet this burden of particularized need.

There is no error.

In this opinion the other judges concurred.

[9] "Safeguarding the confidentiality of grand jury proceedings serves a number of functions. 'First, if [precharging] proceedings were made public, many prospective witnesses would be hesitant to come forward voluntarily, knowing that those against whom they testify would be aware of that testimony. Moreover, witnesses who appeared before the grand jury would be less likely to testify fully and frankly, as they would be open to retribution as well as to inducements. . . . Finally, by preserving the secrecy of the proceedings, we assure that persons who are accused but exonerated by the grand jury will not be held up to public ridicule.' " *In re Final Grand Jury Report Concerning The Torrington Police Department*, 197 Conn. 698, 709–712, 501 A.2d 377 (1985), quoting *Douglas Oil* v. *Petrol Stops Northwest*, 441 U.S. 211, 219, 99 S. Ct. 1667, 60 L. Ed. 2d 156 (1979).

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STATE OF CONNECTICUT *v.* WILLIAM RADO, SR.

The defendant's petition for certification for appeal from the Appellate Court, 14 Conn. App. 322, is denied.

*Timothy C. Moynahan,* in support of the petition.

*Christopher Malany,* deputy assistant state's attorney, in opposition.

Decided July 8, 1988